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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

KARMA AUTOMOTIVE LLC,

Plaintiff,

v.

POWERSOURCE LLC; AND DOES 1-5, INCLUSIVE,

Defendants.

Case No. 8:16-cv-00530-TJH-MRW

FIRST AMENDED COMPLAINT FOR DAMAGES, INJUNCTIVE AND OTHER RELIEF

JURY TRIAL DEMANDED

Action Filed: March 21, 2016

COMPLAINT FOR DAMAGES, INJUNCTIVE AND OTHER RELIEF

Plaintiff Karma Automotive LLC ("Karma"), by and through its attorneys, Vedder Price (CA), LLP, for its First Amended Complaint against defendants PowerSource LLC ("PowerSource" or "Defendant") and Does 1-5 (the "Doe Defendants") (collectively with PowerSource, the "Defendants") alleges as follows:

INTRODUCTION

1. Karma (formerly known as Fisker Automotive and Technology Group LLC) is the inventor and manufacturer of the luxury, plug-in hybrid electric vehicle, the Karma (also known as the Fisker Karma).

2. Karma's unique automobile, which *Forbes* has described as "seductively styled," is the result of many years of hard work of hundreds of highly-skilled designers, engineers and executives. A highly anticipated, new version of its automobile, the Karma Revero, is slated to debut later this year. The lifeblood of Karma's enterprise is its intellectual property, including its trade secret technology. Karma now sues to protect against defendants who seek to threaten the very heart of Karma's competitive advantage by using its intellectual property without authorization.

3. Karma is the owner of the Karma® trademark and over 20 other registered and pending trademarks, as well as vehicle design and other trade dress, images and logos that Karma uses to advertise and promote its high-end electric automobiles. Defendant PowerSource is unlawfully using Karma's trademarks and trade dress to promote its business. PowerSource's website prominently features a photo of the Karma automobile, complete with logo, on its homepage with the slogan, "Unleash Your Fisker Karma." PowerSource has also promoted and marketed its own business and products by distributing promotional items bearing Karma trademarks to Karma vehicle owners and prospective customers. Karma files the instant suit seeking injunctive and other relief against PowerSource due to its unlawful use of Karma's trademarks and trade dress. PowerSource's actions

violate the Lanham Act through trademark infringement, trademark dilution, false advertising and unfair competition. If PowerSource is allowed to continue to make unauthorized use of the Karma trademarks, Karma will suffer irreparable harm, for which monetary damages could not provide an adequate remedy.

4. Additionally, Karma is the owner of many proprietary and trade secret technologies, including the systems, software and related proprietary information, used in and which operate Karma vehicles. In addition to proprietary source code, such proprietary information also includes highly confidential data, specifications and information vital to interpreting, developing and altering the vehicle control systems, including Karma's Vehicle Message Matrix or "VMM" data, and its CAN bus database or "DBC" data. It would be impossible for third parties, in a short timeframe, to develop or produce hardware or software that interact with, alter or modify the operations of Karma's vehicle system without knowledge and use of such proprietary information.

5. From time to time, Karma also develops updates to its proprietary systems, such as the BaseLine 530 or "BL530 Software Update" which upgrades and alters features of the proprietary hybrid control units that operate Karma automobiles. Less than a few hours after Karma had released the BL530 Software Update only to its authorized dealers, PowerSource publicly claimed to have conducted "extensive" testing on the BL530 Software Update. Upon information and belief, PowerSource unlawfully procured an internal copy of the BL530 Software Update, or some earlier version of it, prior to its release and without Karma's knowledge or consent. PowerSource's actions violate the California Uniform Trade Secret Act, the Defend Trade Secrets Act and common law, and entitle Karma to damages.

6. In addition, PowerSource and the Doe Defendants have attempted to wreak havoc on Karma's reputation and goodwill by infringing on Karma's trademarks and intellectual property on the Internet—creating a Twitter page

designed to resemble the legitimate Karma Twitter page and posing as multiple Karma executives online and in other social media, spreading negative comments from fake accounts on websites such as RipoffReport.com. While these cyber-actions were carried out in a manner that largely concealed the identity of the actors, Karma has, through investigation and discovery, linked the creators of both the Twitter and Ripoff Report postings to Ashwin Balan, PowerSource's owner and principal, and PowerSource. There can be no legitimate explanation for these actions; they appear to have no other purpose than to harm, harass, annoy and distract Karma and its executives. PowerSource and the Doe Defendants' actions violate the Lanham Act, and constitute unfair competition. Karma intends to investigate and use all available discovery mechanisms to further ascertain the identities of remaining Doe Defendants and amend this complaint accordingly.

PARTIES

7. Plaintiff Karma Automotive LLC is a Delaware limited liability company with its principal place of business in Orange County, California. Karma acquired the assets and intellectual property interests at issue in this matter in an asset purchase between Fisker Automotive Inc. and Fisker Automotive and Technology Group LLC. Fisker Automotive and Technology Group LLC later changed its name to Karma Automotive LLC.

8. Upon information and belief, defendant PowerSource LLC is a Delaware limited liability company with its principal place of business in Orange County, California.

9. Upon information and belief, Does 1–5 are fictitious names of individuals and businesses alleged for the purpose of substituting names of defendants whose identities will be disclosed in discovery and should be made parties to this action.

JURISDICTION AND VENUE

10. This Court is vested with federal question jurisdiction pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1121 and 28 U.S.C. 1338 (a) and (b).

11. This Court is vested with supplemental jurisdiction over the related state-law claims pursuant to 28 U.S.C. § 1367.

12. This action properly lies in the Central District of California pursuant to 28 U.S.C. § 1391(a) because this case arises out of events and harm occurring within the Central District of California.

GENERAL ALLEGATIONS

- Karma's Intellectual Property -

13. Karma owns U.S. Federal Trademark Registration No. 4,118,804 for the mark "Karma®", which Karma applied to register in 2007 and has been used in commerce to identify Karma vehicles since 2007. Karma also owns U.S. Federal Trademark Registration No. 4,276,130 for the mark "KARMA®," which Karma applied to register in 2010 and has been used in commerce to identify Karma vehicles since 2010. Karma® and KARMA® are collectively referred to herein as the "Karma Marks".

14. The Karma Marks have become incontestable pursuant to 15 U.S.C. § 1065.

15. Karma automobiles are also adorned with the logo of predecessor Fisker (the "Fisker Logo"), that has been used as a symbol to identify and market Karma products, and for which Karma was the exclusive licensee through April 22, 2016; the exclusive license granted Karma the right to sue and enforce any infringement of the same. The Fisker Logo shall be included within the use of the term "Karma Marks" throughout this pleading unless otherwise stated. However, all of Karma's claims herein with regard to the infringing use of the Fisker Logo are asserted only as to such activities through April 22, 2016. An example of the Fisker Logo is attached hereto as Exhibit 1.

16. Additionally hundreds of millions of dollars have been invested into Karma's unique design still frequently referred to as "one of the most beautiful cars, ever." The elements of the elegant and beautiful design are evident in the form of its shape, curves and lines—not nearly so evident, but crucial to its impression of beauty and elegance are the long wheelbase, low roof and wide track. These features of the Karma's unique product design are referred to herein as the "Karma Trade Dress."

17. Since 2007, Karma and its predecessor, from whom nearly all assets were purchased including goodwill, have engaged in the design, manufacture and sale of luxury plug-in hybrid electric vehicles. Karma's serial hybrid technology is a pure series plug-in electric hybrid which drives the vehicle solely on electric power—the internal combustion engine is only used as a generator of electricity—not to drive the vehicle.

18. Karma has engaged in international and national marketing campaigns, in print and on the internet. Karma has spent millions of dollars to promote and advertise its vehicles.

19. Karma's brand name, including the Karma Marks, is well-known and famous throughout the United States. Karma's fame has grown as many fans and owners of the vehicles have come to include high-profile celebrities. For instance, Academy Award-Winner Leonardo DiCaprio owns a Fisker Karma, with the *Daily Mail* publishing an article about DiCaprio's new ride in 2012, which it described as a "hybrid supercar." As another example, when pop sensation Justin Bieber turned 18, People Magazine described his birthday gift of a Fisker Karma as "the highly coveted, ultra-exclusive plug-in hybrid luxury sports sedan."

20. The Karma Marks, as well as the Fisker Logo and Karma Trade Dress identify the source of products and services of Karma in the minds of consumers in the marketplace.

21. Karma is actively working on expanding its product lines, with additional platform vehicles.

22. Karma's vehicles operate using highly sophisticated software and hardware into which Karma has invested hundreds of millions of dollars in research and development. Karma's vehicles, in order to function, employ the use of proprietary, trade secret and confidential information, including source code, confidential data, specifications and information vital to interpreting, developing and altering the vehicle control systems, including Karma's Vehicle Message Matrix or "VMM" data, and its CAN bus database or "DBC" data (the "Proprietary Systems Information"). All such Proprietary Systems Information is kept secret and confidential, and known only to those at Karma on a limited, need-to-know basis.

23. Karma's Proprietary Systems Information also includes various versions of system updates, including the BL530 Software Update which it released only to authorized dealers on the evening of February 25, 2016, to improve upon the features of the hybrid control unit in the vehicle. The BL530 Software Update was not shared with the public; rather, it was physically delivered only to Karma's authorized representatives to perform vehicle updates for Karma owners.

24. The BL530 Software Update is secret and held confidential and known only to those at Karma on a limited, need-to-know basis.

25. In order to maintain the secrecy of its Proprietary Systems Information, including the BL530 Software Update and all previous versions, Karma has required employees to sign confidentiality agreements and non-disclosure agreements. Dealers who install the BL530 Software Update are not privy to its internal workings; they merely install it into vehicles without accessing its proprietary and trade secret technology.

- PowerSource's Unauthorized Use of Karma's Intellectual Property -

26. Defendant PowerSource manufactures and sells products related to Karma's electric vehicle, the Karma.

27. Upon information and belief, Ashwin Balan now acts and has acted at all relevant times as an officer, employee, owner, and/or agent of PowerSource.

28. Defendant PowerSource operates the website pwr-source.com (the "PowerSource Website").

29. The PowerSource Website uses the Karma name, the Karma Marks, the Fisker Logo and Karma Trade Dress. The PowerSource Website prominently features a picture of the Karma automobile, on its home page, with the phrase, "Unleash Your Fisker Karma." The photo includes both the Karma Trade Dress and the Fisker Logo. A copy of this photo is attached hereto as Exhibit 2. The home page also features the Karma Marks. The PowerSource Website appears designed to lead consumers to believe that PowerSource is affiliated with, or an authorized representative of, Karma—yet neither of these things are true. All use of Karma's intellectual property by PowerSource is without Karma's consent.

30. Defendant's use of the Karma Marks, the Karma Logo and Karma Trade Dress in relation to promotion of Defendant's products has caused confusion and is likely to continue to cause confusion in the marketplace. PowerSource, through the PowerSource Website, advertises, promotes and sells products and services including accessories, hardware, and component software, which are intended to replace, supplement, control and/or modify the Karma and its original factory components, and which are being sold in conjunction with the same Karma Marks used by Karma to sell Karma's own products.

31. At the time this action was filed, PowerSource failed to include any disclaimers on its website identifying Karma as the owner of the Karma Marks, the Fisker Logo and Karma Trade Dress, or in any way clarifying that it was not affiliated with Karma. Additionally, PowerSource used more of Karma's

intellectual property than minimally necessary to advertise its goods/services. Since this suit was filed, PowerSource has added some purported disclaimer language on its website, but such language is pejorative, inconspicuous and inadequate.

32. Both PowerSource and Karma simultaneously use the Internet to market their products nationally. Both PowerSource and Karma have offices in and offer services in Southern California.

33. On March 1, 2016, Karma issued a cease and desist letter to PowerSource, demanding that it cease all unauthorized use of Karma's intellectual property. Defendant PowerSource refused to comply, stating its belief that Karma's allegations were "baseless." PowerSource has continued to willfully use and infringe upon Karma's intellectual property despite Karma's objections.

- PowerSource's Unauthorized Use of
Karma's Proprietary and Trade Secret Technology -

34. Balan, who is now, upon information and belief, an agent of PowerSource, was previously employed by Karma from approximately June 2014 through May 2015. In June 2014, Balan signed a Confidentiality Agreement in which he agreed to keep all information relating to Karma confidential and agreed to not use any information gained through his employ at Karma in any manner adverse or detrimental to Karma. He also agreed to return all such information to Karma upon his departure.

35. While Balan was employed at Karma, Balan had access to Karma's Proprietary Systems Information, and worked on projects where he came into possession of such information. Access to such information was necessary for Balan to perform his duties at Karma. Balan also utilized a personal laptop computer to access company information during his employment with Karma. Based on information and belief, Balan's laptop, which Balan took with him upon departing Karma, came to contain and store files containing Karma's Proprietary

Systems Information. Karma has also learned that Balan, during his employment, transferred Proprietary Systems Information outside the company without authorization, emailing such information from his Karma email account to his personal email account. In addition, Karma has learned that Balan remotely accessed Karma's computer systems for a period of several months after he resigned from Karma. Balan has never returned any information or materials to Karma that he acquired during his employment with Karma, despite his obligation to do so. At no time did Karma ever authorize Balan to use any of Karma's Proprietary Systems Information outside the scope of his employment with Karma, nor did it ever authorize Balan to use such information in order to facilitate his work as an agent of PowerSource for the benefit of PowerSource.

-The TOM Unit-

36. PowerSource developed, produces and sells a product called the Transportation Optimization Module, or "TOM" unit, which is a piece of hardware containing software that is intended to be installed into Karma vehicles and that adds and/or alters certain features and functions on Karma vehicles. According to PowerSource's own website, the TOM alters the Karma's "drive modes," and particularly the vehicle's electric battery and charging functions. Upon information and belief, the TOM unit, when installed in a Karma vehicle, may impact, impair and/or compromise the vehicle's basic functions and safety elements.

37. PowerSource purported to have produced the TOM unit at least as early as August of 2015, only months after Balan resigned from Karma. To develop a product like the TOM unit in such a short period of time without intimate knowledge and use of Karma's Proprietary Systems Information is impossible. On information and belief, PowerSource used Karma's Proprietary Systems Information without authorization in developing, producing and installing the TOM.

38. The TOM unit, in fact, includes technical features and functionality originally developed by Karma that were later removed from the production versions of the vehicles, which features and functionality Balan was exposed to while employed by Karma. Indeed, PowerSource admits that the TOM uses and implements these very same functions that were developed by and belong to Karma. PowerSource on its website states in a Q and A format in its "About" section: "Why didn't Fisker Automotive implement this feature when they launched the model year 2012 Fisker Karma? The now defunct Fisker Automotive implemented some of the charging features on the roadshow cars..."

-The BL530 Software Update-

39. As discussed above, the BL530 Software Update is one of Karma's updates for the Karma vehicle's operating system and is part of Karma's Proprietary Systems Information. Karma did not authorize release of the BL530 Software Update to PowerSource. Karma only sent the BL530 Software Update to authorized representatives on the evening of February 25, 2016. PowerSource is not an authorized representative of Karma.

40. On the morning of Friday, February 26, 2016, PowerSource disseminated a mass marketing email over the internet to Karma customers and others (the "Email") announcing that it had "recently completed extensive testing" of Karma's recent "BL530" software release with PowerSource's "TOM unit," and that it had "recently completed a trip from the Seattle area to Southern California and the TOM unit performed flawlessly." A copy of the Email is attached hereto as Exhibit 3.

41. Upon information and belief, in order to conduct the "extensive" testing PowerSource professes to have conducted with the BL530 Software Update by Friday morning, February 26, 2016, PowerSource must have unlawfully procured an internal copy of the BL530 Software Update, or some prior version, before its release and without Karma's knowledge or consent—because the BL530

Software Update was only first released on the evening of February 25, 2016, and then only to authorized dealers.

42. Alternatively, PowerSource reproduced a version of the BL530 using Karma's Proprietary Systems Information without authorization.

- Defendants Wreak Havoc on Social Media -

False Twitter Account

43. Karma operates the Twitter account @karmaautomotive. This is the official Twitter account for Karma and its commercial and advertising activities via social media.

44. PowerSource, acting through its agent Balan, created and operated the Twitter account "@karmaauto" (the "Infringing Twitter Account"). The @karmaauto Twitter account appears to have been designed to cause the public to believe it is the official and legitimate Twitter account of Karma, thereby diverting and confusing Twitter users and followers to mistake the fake site for the official one.

45. As @karmaauto, PowerSource has made unauthorized use of the Karma® Mark on social media and therefore in the public marketplace.

46. This has led to widespread public confusion, including confusion by other automobile manufacturers who have retweeted @karmaauto, in the apparent belief that the Infringing Twitter Account was associated with Karma when it is not.

47. PowerSource intended to confuse the public with the Infringing Twitter Account, going so far as to use a photograph of the Chairman of Wanxiang, Karma's parent company, as the profile picture on the Infringing Twitter Account.

False Entries on Ripoff Report

48. PowerSource, acting through its agent Balan, impersonated Karma's Vice President of Sales and Service, Joost DeVries, on the website www.ripoffreport.com by writing a complaint purportedly from Joost DeVries (the

"False Complaint"), which stated "Beware of the new activities of the Karma Automotive LLC as they do not fix vehicles or even respond. Horrible." The False Complaint also stated: "Karma Automotive LLC Joost DeVries Scam Vehicle Service, does not work, poor performenance (sic)" and "Vehicle was sold with a wrap to hide the paint defects and Joost DeVries and Jim Taylor hid the mechanical issues that subsequently occurred."

False LinkedIn Profile and Messages

49. In addition, Doe Defendants 1–5 have impersonated Karma's CEO, Thomas Corcoran, creating a false online profile with Thomas Corcoran's name, photo, and title on the website LinkedIn (the "False LinkedIn Profile").

50. Doe Defendants 1–5 sent an invitation to connect from the False LinkedIn Profile to third-parties asking contacts to "please add me to your LinkedIn network." In at least one message that Karma has learned of, the body of the message stated: "Heard you know Ashwin Balan a real pain in my arse can you take care of him?"

51. The False LinkedIn Profile does not belong to Thomas Corcoran and he did not send the message above.

COUNT I

(Trademark Infringement Pursuant to §32 of The Lanham Act (15 U.S.C. §1114) against PowerSource)

52. Plaintiff restates and realleges Paragraphs 1-3, 6-21, and 26-33 above as though fully set forth herein.

53. Karma is the sole and exclusive owner of the Karma Marks which are valid, protectable trademarks, registered as U.S. Federal Trademark Registration No. 4,118,804 and No. 4,276,130, and was the exclusive licensee of the Fisker Logo during the relevant time period stated herein.

54. Through Karma's extensive marketing and promotional efforts as detailed above, the Karma automobiles associated with its Marks have become well recognized to the public.

55. The Karma Marks distinguish Karma and the goodwill associated with it from Karma's competitors.

56. PowerSource has used and is using the Karma Marks in commerce in connection with sale, offering for sale, and advertising of PowerSource's goods or services, which use constitutes federal trademark infringement pursuant to the Lanham Act.

57. PowerSource's use and continued use of the Karma Marks is wrongful, intentional and deliberate and in knowing disregard of Karma's exclusive ownership rights. Despite PowerSource's direct, actual knowledge of the Karma Marks and Karma's lack of consent for PowerSource's use of the Marks, PowerSource continues to use the Marks.

58. PowerSource's wrongful acts will continue unless enjoined by this Court and will cause irreparable harm, damage and injury to Karma, which is without a full and adequate remedy at law.

59. Because PowerSource has infringed the Karma Marks, Karma is entitled to PowerSource's profits, its damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of PowerSource's conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT II

(Unfair Competition Pursuant to §43 of The Lanham Act (15 U.S.C. §1125(a) against PowerSource)

60. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, and 52-59 above as though fully set forth herein.

61. The Karma Marks and the Karma Trade Dress as used by Karma in connection with its automobile products is inherently distinctive and/or has acquired secondary meaning.

62. PowerSource is using the Karma Marks and the Karma Trade Dress in interstate commerce, including on its website to promote the sale of its product, in connection with the sale and promotion of PowerSource's goods or services, which use constitutes federal unfair competition pursuant to the Lanham Act.

63. PowerSource's use of the Karma Marks and the Karma Trade Dress in interstate commerce in connection with the sale and promotion of PowerSource's goods and services, is likely to cause confusion and to cause mistake, and to deceive by wrongly suggesting some affiliation, connection or association between PowerSource's sales of competing products and those products offered by Karma under Karma's Marks and Trade Dress. Such use by PowerSource is also likely to create confusion, or to cause mistake, or to deceive as to the affiliation as to the origin, sponsorship or approval of PowerSource's sale of the products by Karma, in violation of 15 U.S.C. §1125(a).

64. PowerSource's use and continued use of the Karma Marks and the Karma Trade Dress is wrongful, intentional and deliberate and in knowing disregard of Karma's exclusive ownership rights. Despite PowerSource's direct, actual knowledge of the Karma Marks and the Karma Trade Dress, and Karma's lack of consent for PowerSource's use of the Karma Marks and the Karma Trade Dress, PowerSource continues to use the Karma Marks and the Karma Trade Dress.

65. PowerSource's wrongful acts will continue unless enjoined by this Court and will cause irreparable harm, damage and injury to Karma, which is without a full and adequate remedy at law.

66. Because PowerSource has violated 15 U.S.C. §1125(a), Karma is entitled to PowerSource's profits, Karma's damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of

PowerSource's conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT III

(False Advertising Pursuant to §43 of The Lanham Act (15 U.S.C. §1125(a) against PowerSource)

67. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, and 52-66 above as though fully set forth herein.

68. PowerSource's advertisements on its website feature unauthorized use of a photograph of the Karma Trade Dress, as well as use of the Karma Marks.

69. PowerSource's use of the Karma Marks and Karma Trade Dress in connection with the sale and promotion of PowerSource's goods and services in commercial advertising or promotion misrepresents the nature, characteristics, qualities or geographic origin of its goods and services in violation of 15 U.S.C. § 1125(a).

70. PowerSource's use of the Karma Marks and Karma Trade Dress has the tendency to deceive a substantial segment of its audience of internet users and potential customers.

71. These misrepresentations of fact, that falsely identify the nature of Karma's relationship with PowerSource's product, are likely to influence customers' purchasing decisions.

72. PowerSource has caused these misrepresentations to enter interstate commerce by publishing them on the internet.

73. Karma has been and/or is likely to be injured as a result of these misrepresentations, including by a lessening of the goodwill associated with Karma products.

74. PowerSource's wrongful acts will continue unless enjoined by this Court and will cause irreparable harm, damage and injury to Karma, which is without a full and adequate remedy at law.

75. Because PowerSource has violated 15 U.S.C. §1125(a), Karma is entitled to PowerSource's profits, Karma's damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of PowerSource's conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT IV

(Trademark Dilution Pursuant to §43 of The Lanham Act (15 U.S.C. §1125(c) against PowerSource)

76. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, and 52-75 above as though fully set forth herein.

77. Karma is the sole and exclusive owner of the Karma Marks which are valid, protectable trademarks, registered as U.S. Federal Trademark Registration No. 4,118,804 and No. 4,276,130.

78. The Karma Marks are widely recognized by the general consuming public as a designation of source of Karma and its goods and services.

79. The Karma Marks have become famous, including, but not limited to, because of: (1) Karma's use of the Karma® Mark since at least 2007 and its use of the KARMA® Mark since at least 2010; (2) the significant, nationwide advertising and marketing of goods using the Karma Marks; (3) the significant, nationwide sales of automobiles using the Karma Marks; (4) the public recognition of the Marks; (5) the celebrity owners of the Karma vehicle; and (6) the Marks' registration.

80. PowerSource, after Karma's Marks became famous, began to use Karma's Marks in commerce.

81. PowerSource's use of the Karma Marks, is likely to cause dilution by blurring or dilution by tarnishment of the Karma Marks in violation of 15 U.S.C. §1125(c).

82. In choosing to use the Karma Marks to promote its goods and services, PowerSource willfully intended to trade on the recognition of the Karma Marks.

83. PowerSource's wrongful acts will continue unless enjoined by this Court and will cause irreparable harm, damage and injury to Karma, which is without a full and adequate remedy at law.

84. Because PowerSource willfully diluted the Karma Marks in violation of 15 U.S.C. § 1125(c), Karma is entitled to PowerSource's profits, Karma's damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of PowerSource's conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT V

(Unfair Competition Under Cal. Bus. & Prof. Code § 17200 *et seq.* against PowerSource)

85. Karma realleges and incorporates herein the allegations contained in Paragraphs 1-3, 6-21, 26-33, and 52-84 of this Complaint.

86. PowerSource is engaged in the unlawful and unfair business practice of using Karma's Marks and Trade Dress to promote its products, as well as the use of Karma's Proprietary Systems Information in its products, without Karma's authorization or consent. This practice is unlawful and violative of several underlying statutory provisions, including Sections 1114, 1125 (a) and 1125(c) of the Lanham Act.

87. PowerSource is also engaged in a fraudulent business practice, namely, representing itself to the public as being in some way associated with Karma, through the use of Karma's Marks and Trade Dress. This behavior is likely to deceive the public into buying PowerSource's products, by misrepresenting to the public that the unauthorized activities of PowerSource are licensed, franchised, sponsored, authorized or otherwise approved by Karma.

88. Such unauthorized use of the Karma Marks and Karma Trade Dress, as well as the use of Karma's Proprietary Systems Information, constitutes unfair competition in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*

89. PowerSource knew or reasonably should have known that PowerSource's actions described above were deceptive, untrue or misleading.

90. As an actual and proximate result of PowerSource's actions described above, Karma has suffered damages in an amount to be determined at trial, and unless PowerSource is enjoined, Karma will continue to sustain severe, immediate and irreparable harm, damage and injury, which entitles Karma to injunctive relief, restitution, and disgorgement and such other relief permitted under Cal. Bus. & Prof. Code § 17200 *et seq.*

COUNT VI

(False Advertising Under Cal. Bus. & Prof. Code § 17500 *et seq.* against PowerSource)

91. Karma realleges and incorporates herein the allegations contained in Paragraphs 1-3, 6-21, 26-33, and 52-90 of the Complaint.

92. PowerSource has performed services and/or induced the public to enter into obligations related to those services by making and disseminating via the internet statements concerning PowerSource's services which are untrue and misleading. These misleading statements include PowerSource's use of Karma's Marks and Trade Dress on its website in promotion of PowerSource's product, making it seem as though Karma in some way sanctions PowerSource's advertisements.

93. PowerSource knew or reasonably should have known with the exercise of reasonable care that its actions described above were untrue or misleading.

94. These acts constitute false advertising in violation of Cal. Bus. & Prof. Code § 17500 *et seq.*

95. As an actual and proximate result of PowerSource's actions referenced above, Karma has suffered damages in an amount to be determined at trial, and unless PowerSource is enjoined, Karma will continue to sustain severe, immediate and irreparable harm, damage and injury, which entitles Karma to injunctive relief, restitution, and disgorgement, and such other relief permitted under Cal. Bus. & Prof. Code § 17500 *et seq.*

COUNT VII

(Misappropriation of Trade Secrets Pursuant to California Civ. Code § 3426 *et seq.* against PowerSource)

96. Plaintiff restates and realleges Paragraphs 1-2, 4-5, 7-12, 22-25, and 34-42 above as though fully set forth herein.

97. Karma is the sole and exclusive owner of its Proprietary Systems Information which constitutes trade secret information and includes source code, confidential data, specifications and information vital to interpreting, developing and altering the vehicle control systems, including Karma's Vehicle Message Matrix or "VMM" data, and its CAN bus database or "DBC" data, as well as updates to the systems such as the BL530 Software Update (the "Trade Secret Information").

98. The Trade Secret Information derives independent economic value from the fact that it is secret and not generally known to the public or persons who can obtain value from its disclosure or use.

99. Karma has taken reasonable efforts to maintain the secrecy of its Trade Secret Information, including the BL530 Software Update, including by requiring employees to sign confidentiality agreements.

100. Balan, while employed at Karma and for a period thereafter, had access to Karma's Trade Secret Information. On information and belief, PowerSource used Karma's Trade Secret Information, including such information obtained from its agent Balan, without authorization to develop and produce the

TOM unit that PowerSource now markets and offers for sale to Karma vehicle owners.

101. Upon information and belief, PowerSource also knowingly acquired Karma's Trade Secret Information, including the BL530 Software Update or a prior version thereof, through improper means or means that PowerSource had reason to know were improper.

102. In the alternative, on information and belief, PowerSource developed a version of the BL530 using Karma's Trade Secret Information without authorization.

103. In the alternative, upon information and belief, PowerSource used Karma's Trade Secret Information, including the BL530 Software Update, without Karma's consent and either used improper means to acquire knowledge of the Trade Secret Information or at the time of use, knew or had reason to know that its knowledge of the Trade Secret Information was derived from or through a person who had utilized improper means to acquire it, acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to Karma to maintain its secrecy or limit its use.

104. As an actual and proximate result of PowerSource's actions referenced above, Karma has suffered damages in an amount to be determined at trial, including actual losses, as well as the disgorgement of profits gained by PowerSource as a result of its use of Karma's Trade Secret Information. Furthermore, unless PowerSource is enjoined, Karma will continue to sustain severe, immediate and irreparable harm, damage and injury. Thus, Karma seeks temporary, preliminary, and permanent injunctive relief to recover and protect its Trade Secret Information.

105. Defendant's acts were malicious, fraudulent, and oppressive, and were done with conscious disregard of Karma's rights, in that they misappropriated Karma's Trade Secret Information intentionally and knowingly and with a

deliberate intent to benefit themselves and to injure Karma's business. Thus, Karma is entitled to an award of punitive damages.

COUNT VIII

(Misappropriation of Trade Secrets Pursuant to 18 U.S.C. § 1836 *et seq.* against PowerSource)

106. Plaintiff restates and realleges Paragraphs 1-2, 4-5, 7-12, 22-25, 34-42 and 96-105 above as though fully set forth herein.

107. Karma is the sole and exclusive owner of its Proprietary Systems Information which constitutes trade secret information and includes source code, confidential data, specifications and information vital to interpreting, developing and altering the vehicle control systems, including Karma's Vehicle Message Matrix or "VMM" data, and its CAN bus database or "DBC" data, as well as updates to the systems such as the BL530 Software Update (the "Trade Secret Information").

108. The Trade Secret Information relates to products and services used, sold, shipped and ordered in, or intended to be used, sold, shipped and/or ordered in interstate or foreign commerce.

109. The Trade Secret Information derives independent economic value from the fact that it is secret and not generally known to the public or persons who can obtain value from its disclosure or use.

110. Karma has taken reasonable efforts to maintain the secrecy of its Trade Secret Information, including the BL530 Software Update, including by requiring employees to sign confidentiality agreements.

111. Balan, while employed at Karma and for a period thereafter, had access to Karma's Trade Secret Information. On information and belief, PowerSource, used Karma's Trade Secret Information, including such information obtained from its agent Balan, without authorization to develop and produce the

TOM unit that PowerSource now markets and offers for sale to Karma vehicle owners.

112. Upon information and belief, PowerSource also knowingly acquired Karma's Trade Secret Information, including the BL530 Software Update or a prior version thereof, and including information obtained through its agent Balan, through improper means or means that Defendant had reason to know were improper.

113. In the alternative, on information and belief, Defendant developed a version of the BL530 using Karma's Trade Secret Information without authorization.

114. In the alternative, upon information and belief, Defendant used Karma's Trade Secret Information, including the BL530 Software Update, without Karma's consent and either used improper means to acquire knowledge of the Trade Secret Information or at the time of use, knew or had reason to know that its knowledge of the Trade Secret Information was derived from or through a person who had utilized improper means to acquire it, acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to Karma to maintain its secrecy or limit its use.

115. As an actual and proximate result of Defendant's actions referenced above, Karma has suffered damages in an amount to be determined at trial, including actual losses, as well as the disgorgement of profits gained by Defendant as a result of its use of Karma's Trade Secret Information. Furthermore, unless Defendant is enjoined, Karma will continue to sustain severe, immediate and irreparable harm, damage and injury. Thus, Karma seeks temporary, preliminary, and permanent injunctive relief to recover and protect its Trade Secret Information.

COUNT IX

(Conversion against PowerSource)

116. Plaintiff restates and realleges Paragraphs 1-2, 4-5, 7-12, 22-25, and 34-42 above as though fully set forth herein.

117. In the alternative, should the previous counts for misappropriation not be found to stand, Karma pleads a cause of action for conversion.

118. Karma is the sole owner of the Karma Proprietary Systems Information, which includes source code, confidential data, specifications and information vital to interpreting, developing and altering the vehicle control systems, including Karma's Vehicle Message Matrix or "VMM" data, and its CAN bus database or "DBC" data, as well as updates to the systems such as the BL530 Software Update.

119. Upon information and belief, Defendant intentionally and substantially interfered with Karma's property by taking possession of the Proprietary Systems Information.

120. Karma did not consent to Defendant's taking possession of the Proprietary Systems Information.

121. Karma was harmed by Defendant's unlawful possession of the Proprietary Systems Information in an amount to be proven at trial.

122. Defendant's conduct was a substantial factor in causing Karma's harm.

COUNT X

(Trademark Infringement under Cal. Bus. & Prof. Code § 14200 *et seq.* against PowerSource)

123. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33 and 52-95 above as though fully set forth herein.

124. The Karma Marks are valid marks entitled to protection under Cal. Bus. & Prof. Code § 14200 *et seq.*

125. Karma applied to register the Karma® Mark in 2007 and the KARMA® Mark in 2010 and have used both continually for several years.

126. PowerSource is using the Karma Marks in connection with the sale, distribution, offering for sale, or advertising of goods and services without Karma's consent.

127. PowerSource's unauthorized use is likely to cause confusion in the minds of the public or mistake, or to deceive the public that PowerSource's business is in some way affiliated with, Karma's business.

128. On information and belief, PowerSource's actions described above were undertaken with knowledge that such actions were intended to cause confusion, mistake or deception, entitling Karma to recover profits and damages pursuant to Cal. Bus. & Prof. Code §14200 *et seq.*

129. Unless PowerSource is enjoined, Karma will continue to suffer irreparable harm and damage to its business, reputation and goodwill. There is no adequate remedy at law for the injury caused by PowerSource's continuing infringement, and Karma is therefore entitled to injunctive relief pursuant to Cal. Bus. & Prof. Code § 14250.

COUNT XI

(Trademark Dilution under Cal. Bus. & Prof. Code § 14200 *et seq.* against PowerSource)

130. Plaintiff restates and realleges Paragraphs 1-3, 6-23, 27-33, 52-95 and 123-129 above as though fully set forth herein.

131. The Karma Marks are valid marks entitled to protection under Cal. Bus. & Prof. Code § 14200 *et seq.*

132. The Karma Marks are famous and widely associated by the public with Karma's brand.

133. PowerSource is using the Karma Marks without consent from Karma.

134. Dilution of the Karma Marks, by blurring or tarnishment, is likely to occur unless PowerSource is enjoined from using the Karma Marks.

135. Unless PowerSource is enjoined, Karma will continue to suffer irreparable harm and damage to its business, reputation and goodwill. There is no adequate remedy at law for the injury caused by PowerSource's continuing infringement and Karma is therefore entitled to injunctive relief pursuant to Cal. Bus. & Prof. Code § 14250.

COUNT XII
(Common-Law Trademark Infringement against PowerSource)

136. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, 52-95 and 123-135 above as though fully set forth herein.

137. The Karma Marks are valid marks entitled to protection.

138. Karma applied to register the Karma® Mark in 2007 and the KARMA® Mark in 2010 and have used both continually for several years.

139. PowerSource is using the Karma Marks in connection with the sale, distribution, offering for sale, or advertising of goods and services without Karma's consent.

140. PowerSource's unauthorized use of the Karma Marks is likely to cause confusion in the minds of the public or mistake, or to deceive the public that PowerSource's business is in some way affiliated with, Karma's business.

141. On information and belief, PowerSource's actions described above were undertaken with knowledge that such actions were intended to cause confusion, mistake or deception.

142. The actions of PowerSource, if not enjoined, will continue. Karma has suffered and continues to suffer damages in an amount to be proven at trial consisting of, among other things, diminution in the value of and goodwill associated with the Karma Marks, and injury to Karma's business.

COUNT XIII

(Trademark Infringement Pursuant to §32 of The Lanham Act (15 U.S.C. §1114) against PowerSource)

143. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, 43-47, 52-95 and 123-142 above as though fully set forth herein.

144. Karma is the sole and exclusive owner of the mark "Karma®" which is a valid, protectable trademark, registered as U.S. Federal Trademark Registration No. 4,118,804.

145. Through Karma's extensive marketing and promotional efforts as detailed above, the Karma automobiles associated with the Karma® Mark have become well recognized to the public.

146. The Karma® Mark distinguishes Karma and the goodwill associated with it from Karma's competitors.

147. Defendant is using the Karma® Mark in commerce through the Infringing Twitter Account, in connection with sale, offering for sale, and advertising of goods or services, which use constitutes federal trademark infringement pursuant to the Lanham Act.

148. Defendant's use and continued use of the Karma® Mark is wrongful, intentional and deliberate and in knowing disregard of Karma's exclusive ownership rights.

149. Because Defendant has infringed the Karma® Mark, Karma is entitled to Defendant's profits, Karma's damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of Defendant's conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT XIV

(Unfair Competition Pursuant to §43 of The Lanham Act (15 U.S.C. §1125(a) against Doe Defendants 1-5)

150. Plaintiff restates and realleges Paragraphs 1-3, 6-21, 26-33, and 49-51 above as though fully set forth herein.

151. 15 U.S.C. §1125(a) specifies that:

> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or… shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

152. Thomas Corcoran is the CEO of Karma and his name is widely associated with Karma and its services.

153. The Doe Defendants have used Karma's CEO Thomas Corcoran's name without authorization and have made a false representation of fact by impersonating Karma's CEO on LinkedIn, a website on which companies and individuals promote their services. The False LinkedIn Profile contains the unauthorized use of both Corcoran's name and the Karma® Mark and purports to be from "Thomas Corcoran, Chief Executive Officer at Karma Automotive."

154. The Doe Defendants have sent negative messages from the False LinkedIn Profile which bear the Karma® Mark and Thomas Corcoran's name and title purporting to represent Karma and Mr. Corcoran.

155. The False LinkedIn Profile used in commerce is likely to deceive as to the affiliation, connection or association of the Doe Defendants with Karma or as to the origin, sponsorship, or approval of Karma's goods, services or commercial activities with those of the Doe Defendants in violation of 15 U.S.C. §1125(a).

156. The Doe Defendants' use and continued use of the False LinkedIn Profile is wrongful, intentional and deliberate and in knowing disregard of Karma's exclusive ownership rights to its services.

157. Because the Doe Defendants have violated 15 U.S.C. §1125(a), Karma is entitled to the Doe Defendants' profits, Karma's damages, costs of suit and attorneys' fees. Based on the circumstances of the case, including the willful nature of the Doe Defendants' conduct, Karma is further entitled to recover treble damages pursuant to 15 U.S.C. § 1117.

COUNT XV

(Unfair Competition Under Cal. Bus. & Prof. Code § 17200 *et seq.* against PowerSource and Doe Defendants 1-5)

158. Karma realleges and incorporates herein the allegations contained in Paragraphs 1-3, 6-21, 26-33, 43-95 and 123-157 of this Complaint.

159. Defendants are engaged in the unlawful and unfair business practice of using the Karma® Mark to promote other goods and services without Karma's authorization or consent. This practice violates the Lanham Act as outlined above.

160. The Doe Defendants are engaged in the unlawful and unfair business practice of using the Karma® Mark and Thomas Corcoran's name without Karma's authorization or consent. This practice violates the Lanham Act as outlined above.

161. PowerSource is engaged in fraudulent business practices, namely, representing themselves to the public as being in some way associated with Karma, through the use of Karma®. This behavior is likely to deceive the public into buying PowerSource's products, by misrepresenting to the public that the unauthorized activities of Defendant are licensed, franchised, sponsored, authorized or otherwise approved by Karma.

162. The Doe Defendants are engaged in fraudulent business practices by using Thomas Corcoran's name without authorization and making a false representation of fact by impersonating Karma's CEO on LinkedIn. The Doe

Defendants have sent negative messages from the False LinkedIn Profile which bear the Karma® Mark and Thomas Corcoran's name and title. This behavior is likely to deceive the public as to the affiliation, connection or association of the Doe Defendants with Karma or as to the origin, sponsorship, or approval of Karma's goods, services or commercial activities with those of the Doe Defendants in violation of 15 U.S.C. §1125(a).

163. PowerSource, including through its agent Balan, is engaged in fraudulent business practices by impersonating Joost DeVries on http://www.ripoffreport.com and by making false statements about Karma under the false profile. Members of the public are likely to be deceived by these fraudulent practices.

164. Defendants' unlawful, unfair and fraudulent business practices are in violation of Cal. Bus. & Prof. Code § 17200 *et seq*.

165. Defendants knew or reasonably should have known that their actions described above were deceptive, untrue or misleading.

166. As an actual and proximate result of Defendants actions described above, Karma has suffered damages in an amount to be determined at trial, and unless Defendants are enjoined, Karma will continue to sustain severe, immediate and irreparable harm, damage and injury, which entitles Karma to injunctive relief, restitution, and disgorgement and such other relief permitted under Cal. Bus. & Prof. Code § 17200 *et seq.*

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment on all causes of action against Defendants as follows:

1. For a permanent injunction:

(a) enjoining PowerSource from unauthorized use of Plaintiff's intellectual property, including the Karma Marks and Karma Trade Dress;

(b) enjoining PowerSource from possessing or using Karma's Trade Secret Information, including the TOM unit and the BL530 Software Update;

(c) ordering PowerSource to return all copies of the TOM unit, the BL530 Software Update and any other Karma Trade Secret Information or Proprietary Systems Information to Karma immediately;

2. For Defendants' profits, Karma's damages, treble damages, costs and attorneys' fees in amount pursuant to 15 U.S.C. §1117;

3. Restitution, disgorgement and/or damages as are permitted by law and under California Business and Professions Code §§17200 & 17500 *et seq.*;

4. Compensatory, consequential, incidental, nominal and/or special damages in amount according to proof;

5. Pre-judgment and post-judgment interest;

6. For costs of suit incurred herein; and

7. For such other and further relief as the Court may deem proper.

JURY DEMAND

Wherefore Karma demands a trial by jury on all claims for damages.

Dated: April 5, 2017

VEDDER PRICE (CA), LLP

By: */s/ Germain D. Labat*
Germain D. Labat

Attorney for Plaintiff
Karma Automotive LLC